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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 _____)
10 **Sunny Wiltbank**, an) No.
individual;)
11)
12 Plaintiff,) **COMPLAINT**
13 v.)
14 **Portfolio Recovery)
Associates, L.L.C.**, a)
15 Delaware limited liability)
company;)
16)
17 Defendant.) (Jury Trial Demanded)
18 _____)

19 Plaintiff alleges as follows:

20 **I. Preliminary Statement**

21 1. Plaintiff brings this action for damages based upon
22 Defendant's violations of the Fair Debt Collection
23 Practices Act, 15 U.S.C. §§ 1692 et seq. (hereinafter
24 "FDCPA"). In the course of attempting to collect a debt
25 allegedly owed by Plaintiff, Defendant engaged in

1 deceptive, unfair and abusive debt collection practices
2 in violation of the FDCPA. Plaintiff seeks to recover
3 actual damages, and statutory damages, as well as
4 reasonable attorney's fees and costs.

II. Statutory Structure of FDCPA

6 2. Congress passed the FDCPA to eliminate abusive debt
7 collection practices by debt collectors, to insure that
8 those debt collectors who refrain from using abusive
9 debt collection practices are not competitively
10 disadvantaged, and to promote consistent state action to
11 protect consumers against debt collection abuses. FDCPA
12 § 1692.

13 3. The FDCPA is designed to protect consumers who have been
14 victimized by unscrupulous debt collectors regardless of
15 whether a valid debt exists. Baker v. G.C. Services
16 Corp., 677 F.2d 775, 777 (9th Cir. 1982).

17 4. The FDCPA defines a "consumer" as any natural person
18 obligated or allegedly obligated to pay any debt. FDCPA
19 § 1692a(3).

20 5. The FDCPA defines "debt" as any obligation or alleged
21 obligation of a consumer to pay money arising out of a
22 transaction in which the money, property, insurance, or
23 services which are the subject or the transaction are
24 primarily for personal, family, or household purposes.

25 FDCPA § 1692a (5).

1 6. The FDCPA defines "debt collector" as any person who
2 uses any instrumentality of interstate commerce or the
3 mails in any business the principal purpose of which is
4 the collection of any debts, or who regularly collects
5 or attempts to collect, directly or indirectly, debts
6 owed or due or asserted to be owed or due to another.
7 FDCPA § 1692a(6).

8 7. Any debt collector who fails to comply with the
9 provisions of the FDCPA is liable for any actual damage
10 sustained; statutory damages up to \$1,000; attorney's
11 fees as determined by the Court and costs of the action.
12 FDCPA § 1692k.

III. Jurisdiction

14 8. Jurisdiction of the Court over this action and the
15 parties herein, arises under 15 U.S.C. § 1692k(d)
16 (FDCPA), and 28 U.S.C. §1337. Venue lies in the Phoenix
17 Division of the District of Arizona as Plaintiff's
18 claims arose from acts of the Defendant perpetrated
19 therein.

IV. Parties

21 9. Plaintiff is an individual residing in Pinal County,
22 Arizona.

23 10. Plaintiff is allegedly obligated to pay a consumer debt.

24 11. Plaintiff is a "consumer" as that term is defined by
25 FDCPA § 1692a(3).

1 12. Defendant Portfolio Recovery Associates, L.L.C.
2 (hereinafter "Portfolio") is a Delaware limited
3 liability company doing business within the State of
4 Arizona.

5 13. Portfolio regularly collects or attempts to collect
6 debts owed or asserted to be owed or due another.

7 14. Portfolio regularly collects or attempts to collect
8 debts which it has purchased after default.

9 15. Portfolio is a "debt collector" as that term is defined
10 by FDCPA § 1692a(6).

11 **V. Factual Allegations**

12 16. Plaintiff incurred a debt for personal, family, and
13 household purposes with CitiBank which ultimately went
14 into default.

15 17. The debt was subsequently assigned or sold to Portfolio
16 for collection purposes.

17 18. In or about January 2009, Portfolio's collectors began
18 calling Plaintiff concerning the CitiBank debt.

19 19. During the week of January 19, 2009, Portfolio's
20 collector telephone Plaintiff on her cell phone and left
21 a voice message for Plaintiff to return the call.

22 20. During the Week of January 26, 2009, Portfolio's
23 collector began calling Plaintiff at her place of
24 employment.

25 21. Plaintiff teaches school at the Maricopa High School,

1 || Maricopa, Arizona.

2 22. Plaintiff is unable to take personal calls at work
3 because she is teaching class all day.

4 23. From January 26, 2009 and February 9, 2009, Portfolio
5 telephone Plaintiff at her school no fewer than five
6 times, and left messages.

7 24. On Tuesday, February 3, 2009, Portfolio's collector,
8 Mrs. Crider called the school's attendance office and
9 left a message with the attendance clerk for Plaintiff
10 to return her call.

11 25. The attendance clerk sent Plaintiff an email informing
12 her of the call from Ms. Crider and the message to call
13 her.

14 26. On Monday, February 9, 2009, Portfolio's collector
15 called the school and left a message on the voice mail
16 for the Counseling Clerk, which she forwarded to
17 Plaintiff.

18 27. On Tuesday, February 10, 2009, Plaintiff returned the
19 call to Portfolio's collector, Crider, and told her to
20 stop calling her at work, and that she would be filing
21 bankruptcy.

22 28. Crider told Plaintiff that she had a copy of her credit
23 report, and that if Plaintiff could afford to pay her
24 mortgages, then she could also afford to pay Portfolio.

25 29. Crider also told plaintiff that she would not be able to

1 claim bankruptcy, and that her bankruptcy case would be
2 dismissed.

3 30. Crider also told Plaintiff that after the bankruptcy
4 case was dismissed, she would owe more than she does now
5 because Portfolio would continue to add interest to the
6 debt.

7 31. Crider asked for Plaintiff's address, and Plaintiff gave
8 her the address of her bankruptcy attorney.

9 32. Crider then told Plaintiff that whether her bankruptcy
10 case was dismissed or discharged, it did not matter.

11 33. On Monday, March 2, 2009 Portfolio's collector "Robin"
12 telephoned Plaintiff.

13 34. Plaintiff told Robin that Crider had her lawyer's
14 information and that it should be in the file.

15 35. Plaintiff also told Robin not to call her again and to
16 quit harassing her.

17 36. Robin became very rude and belligerent towards
18 Plaintiff.

19 37. Plaintiff told Robin to please calm down and to quit
20 yelling at her.

21 38. Robin told Plaintiff that "anybody who owes us \$20,000
22 can't threaten me."

23 39. Robin also told Plaintiff that if she had an issue with
24 her to call her manager.

25 40. The messages left by Portfolio were "communications" as

1 that term is used in the FDCPA.

2 41. In one or more of the messages left by Portfolio for
3 Plaintiff, Portfolio failed to state that the
4 communication was from a debt collector, and therefore
5 violated the FDCPA § 1692e(11). See Foti v. NCO
6 Financial Systems, Inc., 424 F.Supp.2d 643 (2006); and
7 Leyse v. Corporate Collection Services, Inc., 2006 WL
8 2708451 (SDNY Sept. 18, 2006).

9 42. During this time, it was a regular part of Portfolio's
10 debt collection practice to communicate with consumers
11 by leaving messages with third parties without
12 disclosing that the communication was from a debt
13 collector.

14 43. During most of these calls to Plaintiff, Portfolio
15 failed to give meaningful disclosure of the caller's
16 identity in violation of FDCPA § 1692d(6).

17 44. Plaintiff was very embarrassed and angry that Portfolio
18 would continue to call her at work and leave messages
19 with her co-workers.

20 45. As a result of Defendant's actions as outlined above,
21 Plaintiff has suffered damages including, but not
22 limited to, embarrassment, humiliation, anger, and other
23 emotional distress.

24 46. Defendant's actions as outlined above were intentional,
25 willful, and in gross or reckless disregard of

1 Plaintiff's rights and part of its persistent and
2 routine practice of debt collection.

3 47. In the alternative, Defendant's actions were negligent.

4 **VI. Causes of Action**

5 **a. Fair Debt Collection Practices Act**

6 48. Plaintiff repeats, realleges, and incorporates by
7 reference the foregoing paragraphs.

8 49. Defendant's violations of the FDCPA include, but are not
9 necessarily limited to, 15 U.S.C. §§ 1692c(a)(2),
10 1692c(b), 1692d, 1692d(6), 1692e, and 1692e(11).

11 50. As a direct result and proximate cause of Defendant's
12 actions in violation of the FDCPA, Plaintiff has
13 suffered actual damages.

14 **VII. Demand for Jury Trial**

15 Plaintiff hereby demands a jury trial on all issues so
16 triable.

17 **VIII. Prayer for Relief**

18 WHEREFORE, Plaintiff requests that judgment be entered
19 against Defendant for:

20 a) Statutory damages of \$1,000 pursuant to §1692k;
21 b) Actual damages in an amount to be determined by
22 trial;
23 c) Costs and reasonable attorney's fees pursuant to
24 §1692k; and

1 d) Such other relief as may be just and proper.

2

3 DATED March 30, 2009.

4

5 s/ Floyd W. Bybee

6 Floyd W. Bybee, #012651

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